

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARK A. KOLAKOWSKI,

*Plaintiff,*

v.

THE WASHINGTON HOSPITAL D/B/A  
WASHINGTON HEALTH SYSTEM,

*Defendants.*

DOCKET NO: 2:21-CV-574-RJC

**DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

AND NOW, comes the Defendant, The Washington Hospital d/b/a Washington Health System, by and through its counsel, Gordon Rees Scully Mansukhani, LLP, and files the within Motion to Dismiss Plaintiff’s Complaint, averring as follows:

1. Plaintiff initiated this matter by filing a Complaint on April 30, 2021. (ECF No. 1).
2. Counsel for Defendant executed a Waiver of Service on May 13, 2021, making Defendant’s response to the Complaint due on July 12, 2021. (ECF No. 9).
3. Plaintiff alleges federal claims of violations of the First Amendment and state law claims of a violation of the Pennsylvania Whistleblower Law, wrongful discharge, injurious falsehood, and libel. (ECF No. 1).
4. Although Plaintiff titled his “civil conspiracy” claim as arising under “Pennsylvania common law” and Sections 1983 and 1988, the allegations make clear that this is a claim purportedly arising under Section 1983. This claim must be dismissed, as the factual allegations do not support a conspiracy claim and, even if they did, Defendant is a corporation that cannot conspire with itself and the allegations do not show any conspiracy

with independent third parties or officers acting in a personal capacity.

5. Plaintiff's claim under the Pennsylvania Whistleblower Law must be dismissed because the allegations cannot and do not show that Defendant is a public body that is subject to the Whistleblower Law.

6. Plaintiff's claim of injurious falsehood must also be dismissed, as Pennsylvania law recognizes this tort only in the context of a commercial relationship involving the representation of the title and quality of another's interest in goods or property, and the allegations in the Complaint do not state such a claim.

7. Contemporaneous with this Motion, Defendant has filed an accompanying Brief in Support of this Motion to Dismiss, the contents of which are incorporated herein by reference.

WHEREFORE, Defendant, The Washington Hospital d/b/a Washington Health System, respectfully requests that this Honorable Court enter an order dismissing Plaintiff's Section 1983 conspiracy, Whistleblower Law, and injurious falsehood claims against Defendant with prejudice.

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI, LLP

Date: July \_\_, 2021

/s/ Matthew A. Deluzio

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**CERTIFICATE OF CONFERRAL**

I hereby certify that I have made a good faith effort to confer with Plaintiff prior to filing the foregoing Motion to Dismiss to determine whether the identified deficiencies within Plaintiff's Complaint may be cured by amendment.

GORDON REES SCULLY MANSUKHANI, LLP

/s/ Matthew A. Deluzio

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record this 12<sup>th</sup> day of July, 2021, via the Electronic Filing System, as follows:

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*Counsel for Plaintiff*

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